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July 16, 2003

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FROM: Jennifer D. Weinbach, CP  
Certified Paralegal to B. Craig Killough

RE: Application No. 09/244,374

OUR FILE NO.: 1575.001/REISSUE

Pages 7 including cover sheet

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## Message to Addressee:

Pursuant to our telephone conversation today, please see the attached.

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*Handwritten initials*

*7/16/03*

*Reissue Declaration*

\*\*\*\*\* -COMM. - NAL - \*\*\*\*\* DATE MAR-12-2002 \*\* TIME 02:46 \*\*\*\*\*

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## FAX TRANSMISSION

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From: B. Craig Killough

Date: March 12, 2002

To: Examiner Gloria Hale

Fax No.: (703) 746-4902

Group Art Unit: 3741

Our File No. 1575.001

Pages 6, including cover sheet

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Documents attached: Please see attached Communication and Declaration.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): HOLLIDAY, D.

Application No. 09/244,374

Filed: 2/4/1999

Title: ATHLETIC BREAST AND CHEST  
PROTECTOR

Attorney Docket No.: 1575.001

Group Art Unit: 3741

Examiner: G. Hale

BOX NO FEE

Assistant Commissioner for Patents

Washington, D.C. 20231

Filed Via Facsimile

(703) 746-4902

COMMUNICATION TO THE EXAMINER

Dear Sir:

A New Declaration is transmitted herewith.

REMARKS

Applicant appreciates the Examiner's advice by telephone that the Office deems the Declaration filed October 24, 2000 to be defective, in that it does not particularly state "at least one error being relied upon as the basis for reissue" as required by 37 C.F.R. §1.175.

It is respectfully submitted that the Declaration filed October 24, 2000 is sufficient under 37 C.F.R. §1.175. It should be noted that 37 C.F.R. §1.175 formerly required a statement in the Declaration "particularly specifying the errors relied upon, and how they arose or occurred." (former version of 37 C.F.R. §1.175(a)(5)). However, subsection (5) has been deleted from 37 C.F.R. §1.175(a), and accordingly, there is no current


Serial Number: 09/244,4  
Art Unit: 3741

requirement that the Declaration particularly specify the errors relied upon, and how they arose or occurred.

MPEP §1402 states that "An attorney's failure to appreciate the full scope of the invention was held to be an error correctable through reissue. *In Re Wilder*, 736 F.2d 1516 (Fed. Cir. 1984)." While the Declaration filed October 24, 2000 is adequate under the current version of 37 C.F.R. §1.175, nonetheless, a new Declaration is submitted herewith, wherein it is stated that the attorney who prosecuted the original application failed to appreciate the full scope of the invention. *In Re Wilder*, the applicant set forth the specific errors relied upon and how they arise or occurred. However, *In Re Wilder* construed 37 C.F.R. §1.175 prior to subsection (a)(5) thereof being deleted.

The Examiner also indicated by telephone that the case was in condition for allowance, subject to resolving the issue regarding the Declaration as addressed herein, and subject to Patentee's submission of the original Patent. The original Patent will be transmitted to the Examiner under separate cover.

Respectfully submitted,

  
B. Craig Killough  
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Dated: March 11, 2002

Serial Number: 09/244,444  
Art Unit: 3741

**CERTIFICATE OF FACSIMILE**

I hereby certify that this Communication to the Examiner is being filed via facsimile to Examiner Hale at (703) 746-4902 addressed to: Commissioner of Patents and Trademarks, Box Non-Fee Amendments, Washington, D.C. 20231, on this 12 day of March, 2002.

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